

347—215.3(91D) Definitions. As used in 347—Chapters 216 to 220:

215.3(1) “*Agriculture*” includes farming in all its branches and among other things includes the cultivation and tillage of the soil; dairying; the production, cultivation, growing, and harvesting of any agricultural or horticultural commodities (including commodities defined as agricultural commodities in Section 15(g) of the Agricultural Marketing Act, as amended); the raising of livestock, bees, furbearing animals, or poultry; and any practices (including any forestry or lumbering operations) performed by a farmer or on a farm incident to or in conjunction with farming operations, including preparation for market, delivery to storage or to market or to carriers for transportation to market.

215.3(2) “*American vessel*” includes any vessel which is documented or numbered under the laws of the United States.

215.3(3) “*Commissioner*” means the labor commissioner or the commissioner’s designee.

215.3(4) “*Commerce*” means trade, commerce, transportation, transmission, or communication among the several states or between any state and any place outside thereof.

215.3(5) “*Elementary school*” means a day or residential school which provides elementary education, as determined under state law.

215.3(6) “*Employ*” includes to suffer or permit to work.

215.3(7) “*Employee*” means any individual employed by an employer. In the case of an individual employed by a public agency, the term means any individual employed by the state, political subdivision of the state, or an interstate governmental agency, other than the individual:

a. Who is not subject to the civil service laws of the state, political subdivision, or agency which employs the individual; and

b. Who

(1) Holds a public elective office of that state, political subdivision, or agency,

(2) Is selected by the holder of the office to be a member of the holder’s personal staff,

(3) Is appointed by the officeholder to serve on a policymaking level,

(4) Is an immediate adviser to the officeholder with respect to the constitutional or legal powers of the office, or

(5) Is an employee in the legislative branch or legislative body of that state, political subdivision, or agency and is not employed by the legislative library of the state, political subdivision, or agency.

215.3(8) “*Employee*” does not mean:

a. For purposes of the definition of “Person-day,” any individual employed by an employer engaged in agriculture if the individual is the parent, spouse, child, or other member of the employer’s immediate family.

b. Any individual who volunteers to perform services for a public agency which is the state, a political subdivision of the state, or an interstate government agency, if:

(1) The individual receives no compensation or is paid expenses, reasonable benefits, or a nominal fee to perform the services for which the individual volunteered; and

(2) The services are not the same type of services which the individual is employed to perform for the public agency.

However, an employee of a public agency which is the state, political subdivision of the state, or an interstate governmental agency may volunteer to perform services for any other state, political subdivision, or interstate governmental agency, including a state, political subdivision or agency with which the employing state, political subdivision, or agency has a mutual aid agreement.

215.3(9) “*Employer*” includes any person acting directly or indirectly in the interest of an employer in relation to an employee and includes a public agency, but does not include any labor organization (other than when acting as an employer) or anyone acting in the capacity of officer or agent of the labor organization.

215.3(10) “*Enterprise*” means the related activities performed (either through unified operation or common control) by any person or persons for a common business purpose, and includes all activities whether performed in one or more establishments or by one or more corporate or other organizational units including departments of an establishment operated through leasing arrangements. Enterprise shall not include the related activities performed for the enterprise by an independent contractor, provided

that, within the meaning of this definition, a retail or service establishment which is under independent ownership shall not be deemed to be so operated or controlled as to be other than a separate and distinct enterprise by reason of any arrangement, which includes, but is not necessarily limited to, an agreement:

- a.* That it will sell, or sell only, certain goods specified by a particular manufacturer, distributor, or advertiser;
- b.* That it will join with other establishments in the same industry for the purpose of collective purchasing; or
- c.* That it will have the exclusive right to sell the goods or use the brand name of a manufacturer, distributor, or advertiser within a specified area, or by reason of the fact that it occupies premises leased to it by a person who also leases premises to other retail or service establishments. For purposes of this definition, the following activities performed by any person or persons shall be deemed to be those activities performed for a business purpose:

- (1) In connection with the operation of a hospital, an institution primarily engaged in the care of the sick, the aged, the mentally ill or deficient who reside on the premises of the institution; a school for mentally or physically handicapped or gifted children; a day-care, preschool, elementary or secondary school; or an institution of higher education (regardless of whether the hospital, institution, or school is public or private or operated for profit or not for profit);

- (2) In connection with the operation of a street, suburban or interurban electric railway, or local trolley or motorbus carrier, if the rates and services of the railway or carrier are subject to regulation by a state or local agency (regardless of whether the railway or carrier is public or private or operated for profit or not for profit); or

- (3) In connection with the activities of a public agency.

215.3(11) *“Enterprise engaged in commerce or in the production of goods for commerce”* means an enterprise which has employees engaged in commerce or in the production of goods for commerce, or employees handling, selling, or otherwise working on goods or materials that have been moved in or produced for commerce by any person, and which:

- a.* Is an enterprise, other than an enterprise which is comprised exclusively of retail or service establishments and which is described in 215.3(11) “*b.*,” whose annual gross volume of sales made or business done (exclusive of excise taxes at the retail level which are separately stated) is not less than \$250,000;
- b.* Is an enterprise whose annual gross volume of sales made or business done (exclusive of excise taxes at the retail level which are separately stated) is not less than \$300,000 (\$217,500 if prior to March 31, 1990);
- c.* Is, without regard to gross volume of sales or business done, engaged in laundering, cleaning, or repairing clothing or fabrics;
- d.* Is, without regard to gross volume of sales or business done, engaged in the business of construction or reconstruction, or both;
- e.* Is engaged in the operation of a hospital, an institution primarily engaged in the care of the sick, the aged, the mentally ill or deficient who reside on the premises of the institution; a school for mentally or physically handicapped or gifted children; a day-care, preschool, elementary or secondary school; or an institution of higher education (regardless of whether the hospital, institution, or school is public or private or operated for profit or not for profit); or
- f.* Is an activity of a public agency.

Any establishment which has as its only regular employees the owner thereof or the parent, spouse, child, or other member of the immediate family of the owner shall not be considered to be an enterprise engaged in commerce or in the production of goods for commerce or a part of an enterprise, and the sales of the establishments shall not be included for the purpose of determining the annual gross volume of sales of any enterprise for the purpose of 215.3(11). The employees of an enterprise which is a public agency shall for purpose of this definition be deemed to be employees engaged in commerce, or in the production of goods for commerce, or employees handling, selling, or otherwise working on goods or materials that have been moved in or produced for commerce.

215.3(12) “*Goods*” means goods (including ships and marine equipment), wares, products, commodities, merchandise or articles or subjects of commerce of any character, or any part or ingredient thereof, but does not include goods after their delivery into the actual physical possession of the ultimate consumer thereof other than a producer, manufacturer, or processor thereof.

215.3(13) “*Hours worked.*” In determining, for the purpose of the minimum wage, the hours for which an employee is employed, there shall be excluded any time spent in changing clothes or washing at the beginning or end of each workday which was excluded from measured working time during the week involved by the express terms of or by custom or practice under a bona fide collective bargaining agreement applicable to the particular employee. In determining the total hours worked, the employer must include all time the employee is required to be on the premises or on duty (and not completely relieved of all job duties during a meal or sleep period) and all the time the employee is suffered or permitted to work.

215.3(14) “*Industry*” means a trade, business, industry, or other activity, or branch or group thereof, in which individuals are gainfully employed.

215.3(15) “*Person*” means an individual, partnership, association, corporation, business trust, legal representative, or any organized group of persons.

215.3(16) “*Person-day*” means any day during which an employee performs any agricultural labor for not less than one hour.

215.3(17) “*Produced*” means produced, manufactured, mined, handled, or in any other manner worked on in any state; and an employee shall be deemed to have been engaged in the production of goods if the employee was employed in producing, manufacturing, mining, handling, transporting, or in any other manner working on the goods, or in any closely related process or occupation directly essential to the production thereof, in any state.

215.3(18) “*Public agency*” means the government of the state of Iowa, its various departments and agencies, and any political subdivision of the state.

215.3(19) “*Resale*” shall not include the sale of goods to be used in residential or farm building construction, repair, or maintenance, provided that the sale is recognized as a bona fide retail sale in the industry.

215.3(20) “*Sale*” or “*sell*” includes any sale, exchange, contract to sell, consignment for sale, shipment for sale, or other disposition.

215.3(21) “*Secondary school*” means a day or residential school which provides secondary education, as determined under state law.

215.3(22) “*Tipped employee*” means any employee engaged in an occupation in which the employee customarily received more than \$30 a month in tips.

215.3(23) “*Wage*” paid to any employee includes the reasonable cost, as determined by the labor commissioner, to the employer of furnishing the employee with board, lodging, or other facilities, if the board, lodging, or other facilities are customarily furnished by the employer to the employees, provided that the cost of board, lodging or other facilities shall not be included as a part of the wage paid to any employee to the extent it is excluded therefrom under the terms of a bona fide collective bargaining agreement applicable to the particular employee, provided further, that the commissioner is authorized to determine the fair value of the board, lodging, or other facilities for defined classes of employees and in defined areas, based on average cost to the employer or to groups of employers similarly situated, or average value to groups of employees, or other appropriate measures of fair value. The evaluations, where applicable and pertinent, shall be used in lieu of actual measure of cost in determining the wage paid to any employee. In determining the wage of a tipped employee, the amount paid the employee by the employer shall be deemed to be increased on account of tips by an amount determined by the employer, but not by an amount in excess of 40 percent of the applicable minimum wage rate, except that the amount of the increase on account of tips determined by the employer may not exceed the value of tips actually received by the employee. The previous sentence shall not apply with respect to any tipped employee unless:

- a. The employee has been informed by the employer of the provisions of this definition, and

b. All tips received by the employee have been retained by the employee, except that this definition shall not be construed to prohibit the pooling of tips among employees who customarily and regularly receive tips.

SOURCE: 29 U.S.C. 203